

REMARKS

Claims 17, 38-41, 56-65 are pending in the application. Claims 17, 38-41, 56-65 are rejected in this Office Action.

Claim 17 has been amended to a composition having a dimethicone of 500,000 to 650,000 cSt. Support for this amendment can be found on page 10, lines 10 – 12 and in example 3 on page 30.

Claims 56-65 are canceled.

Rejection Under 35 U.S.C. §103

The Examiner rejects claims 17, 38-41, 56 and 57 under 35 U.S.C. §103(a) as being anticipated by Dreschsler et al. (US 6074654)(Dreschler) in view of Finkenaur et al. (4935228)(Finkenaur) and Amoco Technical Data.

The Examiner rejects claims 17, 38-41, 58 and 59 and 60 – 65 under 35 U.S.C. §103(a) as being anticipated by Dreschsler et al. (US 6074654)(Dreschler) in view of Manufacturing Chemist, Exxon Mobile chemical Technical Data.

The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations. *Id.*, citing *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

The scope of Dreschler discloses a lip color film-forming composition comprising crosslinked organosiloxane resin such as Wacker 803 from Wacker Silicones corp. (trimethylsiloxysilicate) and pigments in a volatile carrier. See col. 7, line 46 – col. 9, line 2" and a method of enhancing the gloss, shine, and feel of lip composition by apply a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. See col. 10, line 63 – col. 16, line 7."

Dreschler specifies that the overcoat does not significantly disrupt the composition of the present invention (column 11, lines 8 – 10).

Applicants claim, a lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition, having a dimethicone of 500,000 to 650,000cSt, in combination with a non reactive wetting agent having affinity to, the composition, said wetting agent being an alpha olefin copolymer, which copolymer is a liquid polymeric hydrocarbon having a number average molecular weight greater than 650 devoid of non-volatile silicone oils, and wherein the wetting agent is nonreactive with transfer resistant, film forming, cross-linked resinous silicone while at the same time capable of interacting with the internal and external surfaces and matrices of the composition by seeping into spaces and surfaces sufficient to wet the composition.

The Examiner points out that "Dreschler fails to specifically teach using a liquid polymeric hydrocarbon with number average greater than about 650 to make the overcoating composition."

The Examiner uses Finkenaur for a polybutene to make the lip gloss more water proof. The Examiner adds that Finkenaur fails to teach the number average molecular weight of polybutene.

The Examiner relies on Amoco Technical Data for disclosure of a polybutene having an average molecular weight of 940.

The Examiner uses Manufacturing Chemist for disclosure poly-a-olefins are as an overcoating lip-gloss.

The prior art; Dreschler, Finkenaur, Amoco Technical Data, and Manufacturing Chemist fail to suggest that the composition and wetting agent have a interaction that is more than application of a topcoat over a colored base.

Dreschler specifically limits the claims to the composition disclosed in Dreschler. Finkenaur, Amoco Technical Data, and Manufacturing Chemist suggest an topcoat but

do not recognize that the combination of a specific composition with a specific wetting agent provides the desired transfer resistance. It is that combination that is unexpected and provides the desired transfer resistance.

A proper obviousness analysis requires that the Examiner must establish a *prima facie* case of unpatentability based on obviousness. In doing so the Examiner should evaluate the totality of the facts and all the evidence to determine whether the claimed invention would have been obvious. MPEP § 2144.08 (II).

In support of applicant's claim a Declaration of Anjali Patil under 37 CFR 1.132 is attached. In the Declaration applicant shows the differences between the prior art and the claims at issue as well as the level of skill in the pertinent art.

The Declaration compares the following formulations:

Example A – Applicant lip color with a dimethicone of 600,000 cSt

Example B – Drechsler lip color with a dimethicone of >1M cSt

The topcoat was applied to both films and the results demonstrate the unique relationship between the base composition and the topcoat.

In view of the above amendments and remarks, Applicants respectfully submit that this application is now in condition for allowance and earnestly request such action.

If any points remain at issue which can best be resolved by way of a telephonic or personal interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

Respectfully Submitted,



Joy S. Goudie
Attorney for Applicants
Reg. No. 48,146
Revlon Consumer Products Corporation
237 Park Avenue
New York, New York 10017
(212) 527-5647